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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 J.B., a minor by and through his  
12 guardian ad litem, MICHELLE  
13 B.,

14 Plaintiff,

15 v.

16 BANNING UNIFIED SCHOOL  
17 DISTRICT, a public educational  
18 entity, and DAWN DEZERN,  
19 and DOES 1-30,

20 Defendants.

Case No.

COMPLAINT FOR DAMAGES

JURY DEMANDED

21 Plaintiff J.B., a minor by and through his guardian ad litem MICHELLE B., alleges  
22 as follows:

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**JURISDICTION AND VENUE**

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2 1. Jurisdiction over Plaintiff's federal law claims is founded upon 28 U.S.C.  
3 section 1331 [federal question jurisdiction] and 28 U.S.C. section 1343(a)(3) [federal  
4 civil rights jurisdiction]. All claims for violation of Plaintiffs' rights under the laws and  
5 the Constitution of the United States are brought pursuant to 42 U.S.C. section 1983.

**INTRADISTRICT ASSIGNMENT**

6 2. The Banning Unified School District is located within Riverside County,  
7 and all of the acts and/or omissions giving rise to the claims in this action occurred in  
8 Riverside County, which is located within the geographical boundaries of the Eastern  
9 Division of the United States District Court, Central District of California.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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11 3. On or about April 5, 2017, Plaintiff filed an appropriate timely notice for  
12 claim for damages against the Banning Unified School District. On or around May 19,  
13 2017, Plaintiff's counsel received notice that such claim was rejected. As a result,  
14 Plaintiff has exhausted all remedies in attempting to resolve the matter described in this  
15 Complaint.

**PARTIES**

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17 4. Plaintiff Michelle B. brings an action on her own behalf and as guardian ad  
18 litem for her son, J.B. and has been a resident of the City of Banning at all times relevant  
19 to this complaint.

20 5. Plaintiff J.B. is a minor and was a resident of the City of Banning at the  
21 time that the incidents alleged herein occurred.

22 6. At all times relevant to this complaint, defendant Dawn Dezern  
23 ("DEZERN") was a teacher employed by Banning Unified School District ("BUSD"),  
24 Banning, California. All actions alleged herein by DEZERN were taken under color of state  
25 law and in the course and scope of her employment with BUSD.

26 7. The BUSD is a public entity duly incorporated and operated under California  
27 Law as a school district. Defendant BUSD is a public entity subject to Title II of the  
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1 Americans with Disabilities Act of 1990, the requirements of the Rehabilitation Act of 1973,  
2 the requirements of California state law requiring full and equal access to public facilities  
3 pursuant to Government Code sections 11135 and 4450, et seq., and to all other legal  
4 requirements referred to in this Complaint.

5 8. In enacting Title II of the Americans with Disabilities Act Congress validly  
6 abrogated state sovereign immunity, and thus AUSD may be sued pursuant to Title II. *Hasan*  
7 *v. Jvled. Ed. of California*, 279 F.3d 1167, 1170 (9th Cir. 2002). By accepting Federal  
8 Rehabilitation Act funds, BUSD waived its sovereign immunity under the Eleventh  
9 Amendment to claims brought pursuant to § 504 of the Rehabilitation Act of 1973. *Pugliese*  
10 *v. Dillenberg*, 346 F.3d 937 (9th Cir. 2003).

11 9. The true names and capacities of defendants sued as DOES 1 through 30 are  
12 unknown to Plaintiffs and Plaintiffs pray leave to amend to allege the true names and  
13 capacities when they are ascertained.

14 10. At all relevant times set forth herein, all Defendants acted in concert and as the  
15 agent of one another.

## 17 INTRODUCTION

18 11. J.B. was born on August 4, 2009. He is a student enrolled in Banning  
19 Unified School District. He is eligible to receive special education services as a result of  
20 deficits caused by a traumatic brain injury that resulted from his being hit by a car when  
21 he was 4 years old. Michelle B. is his mother.

22 12. On or about October 4, 2016, J.B. was struck multiple times in the face by his  
23 teacher Ms. Dawn Dezern. This occurred in a first grade classroom at Hoffer Elementary  
24 school. Hoffer Elementary is a school within the Banning Unified School District.

25 13. J.B. suffered a traumatic brain injury when he was struck by a car at the age  
26 of 4. Residual effects of that injury include visual-spacial deficits and coordination issues  
27 which frequently result in his accidentally bumping into other children. On October 4, 2016,  
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1 J.B. accidentally bumped into a child in his class. Ms. Dezern then called him to the front  
 2 of the room, grabbed his arm, and struck him in the face multiple times with his own hand.  
 3 While she did this she stated "how do you like that?" and "how does it feel?" When he began  
 4 to cry she stated "oh, that didn't hurt."

5 14. In a subsequent meeting with J.B.'s parents Ms. Dezern admitted to repeatedly  
 6 striking J.B. and stated that she believed it "wasn't a big deal" and expressed her belief that  
 7 striking students was an appropriate behavioral intervention.

8 15. J.B. suffered significant psychological and physical symptoms that were not  
 9 present prior to J.B. being hit by Ms. Dezern. Since that time he has repeatedly been  
 10 observed by his parents hitting himself in the head while engaging in negative self-talk about  
 11 his disability-related deficits. To date, almost two years after the incident, his parents are still  
 12 trying to stop this behavior. When they ask him why he does it, he refers to Ms. Dezern's  
 13 "teaching him" that his disability-related differences were "bad."

#### 14 **FIRST CLAIM FOR RELIEF**

#### 15 **(Violation of Constitutional Rights, 42 U.S.C. § 1983)**

16 16. J.B. incorporates by reference the allegations of paragraphs 1 through 15  
 17 above, as if fully set forth herein.

18 17. Defendant DEZERN violated minor Plaintiff J.B.'s rights under the Fourth  
 19 Amendment to the United States Constitution by utilizing unjustified and unreasonable force  
 20 against minor Plaintiff.

21 18. Defendants DOES 1-30, District Administrators in charge of hiring, training,  
 22 supervising DEZERN, violated J.B.'s rights under the Fourth Amendment to the United States  
 23 Constitution by actions, including but not limited to, acting with deliberate indifference to  
 24 the risk of harm to Plaintiff from Defendant DEZERN.

25 19. Defendants DEZERN and DOES 1-30 violated Plaintiffs J.B. and Michelle  
 26 B.'s rights under the Due Process Clause to the Fourteenth Amendment to the United States  
 27 Constitution by actions, including but not limited to:  
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1 a. Intentionally interfering with the parent child relationship by concealing  
2 information regarding the physical and emotional trauma inflicted on  
3 J.B. by DEZERN.

4 b. Intentionally interfering with J.B. and Michelle B.'s right to provide and  
5 receive nurture, support and comfort regarding a highly traumatic  
6 event.

7 20. As a proximate result of the above-mentioned conduct, J.B. suffered  
8 general damages, including, but not limited to bruising, emotional distress, pain, suffering,  
9 and inconvenience.

10 21. As a further proximate result of the above-mentioned conduct, J.B.  
11 suffered special damages, including, but not limited to counseling expenses, to be determined  
12 at trial.

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14 **SECOND CLAIM FOR RELIEF**  
15 **(Violation of the Americans with Disabilities Act)**

16 22. Plaintiff J.B. and Michelle B. incorporate by reference the allegations of  
17 paragraphs 1 through 21 above, as if fully set forth herein.

18 23. Effective January 26, 1992, plaintiff J.B. was entitled to the protections of the  
19 "Public Services" provision of Title II of the Americans with Disabilities Act of 1990. Title  
20 II, Subpart A prohibits discrimination by any "public entity," including any state or local  
21 government, as defined by 42 U.S.C. section 12131, section 201 of the ADA.

22 24. Pursuant to 42 U.S.C. section 12132, Section 202 of Title II, no qualified  
23 individual with a disability shall, by reason of such disability, be excluded from participation  
24 in or be denied the benefits of the services, programs or activities of a public entity, or be  
25 subjected to discrimination by any such entity. Plaintiff J.B. was at all times relevant herein  
26 a qualified individual with a disability as therein defined.

27 25. BUSD has failed in its responsibilities under Title II to provide its services,  
28 programs and activities in a full and equal manner to disabled persons as required by the

1 ADA, including failing to ensure that educational services are provided on an equal basis  
2 to children with disabilities and free of hostility toward their disability.

3 26. BUSD has further failed in its responsibilities under Title II to provide its  
4 services, programs and activities in a full and equal manner to disabled persons as  
5 required by the ADA by subjecting Plaintiff to a hostile educational environment.

6 27. As a result of BUSD's failure to comply with its duty under Title II,  
7 Plaintiff J.B. has suffered damages including special and general damages according to  
8 proof.

9 **THIRD CLAIM FOR RELIEF**

10 **(Violation of Section 504 of the Rehabilitation Act of 1973)**

11 28. J.B. refers to and incorporates by reference the allegations contained in  
12 Paragraphs 1 through 27, inclusive.

13 29. Plaintiffs are informed and believe and therefore allege that BUSD is and  
14 has been at all relevant times the recipient of federal financial assistance, and that part of  
15 that financial assistance has been used to fund the operations, construction, and/or  
16 maintenance of the specific public facilities described herein and the activities that take  
17 place therein.

18 30. By their actions or inactions in denying equal access to educational services  
19 and by subjecting Plaintiff J.B. to a hostile educational environment, defendant has  
20 violated Plaintiff J.B.'s rights under Section 504 of the Rehabilitation Act of 1973, 29  
21 U.S.C. section 794, and the regulations promulgated thereunder.

22 31. As a result of the District's failure to comply with its duty under Section 504  
23 of the Rehabilitation Act of 1973, 29 U.S.C. section 794, and the regulations promulgated  
24 thereunder, Plaintiff J.B. has suffered damages including special and general damages  
25 according to proof.

26 **JURY DEMAND**

27 Plaintiff hereby demands that this matter be tried to a jury.  
28

**PRAYER FOR RELIEF**


WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. Compensatory damages to Plaintiffs for injury and for medical expenses;
2. Punitive damages against Defendant DEZERN;
3. Attorney's fees and costs; and
4. Such other and further relief as the Court deems just and proper.

Dated: October 3, 2018

Respectfully Submitted,

Newman.Aaronson.Vanaman LLP

By:   
David W. German

Attorney for Plaintiffs